

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMALL S. BAKER,

Plaintiff,

v.

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS, et
al.,

Defendant.

CASE NO. 3:24-CV-5893-JLR-DWC

ORDER DECLINING TO SERVE
COMPLAINT

The District Court referred this action to United States Magistrate Judge David W. Christel. Plaintiff Jamall S. Baker, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. §1915A, the Court finds Plaintiff has failed to state a claim upon which relief can be granted, but provides Plaintiff leave to file an amended pleading by January 6, 2025, to cure the deficiencies identified herein.

I. Background

In the Complaint, Plaintiff, an inmate housed at the Monroe Correctional Complex -SOU, alleges Defendants State of Washington Department of Corrections, Renee Ryburn, Calvin

1 Cogburn, and John Doe failed to provide Plaintiff with the proper medical care and
2 accommodations for his Anoxic Brain Injury. *See* Dkt. 4-2. Plaintiff contends the defendants
3 violated his federal constitutional rights and his rights under the Americans with Disabilities Act
4 (“ADA”). *Id.* He also alleges state law tort claims. *Id.*

5 II. Discussion

6 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
7 complaints brought by prisoners seeking relief against a governmental entity or officer or
8 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
9 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
10 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
11 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
12 152 F.3d 1193 (9th Cir. 1998).

13 *Failure to State a Claim.* First, Plaintiff alleges Defendants violated his rights under the
14 ADA. *See* Dkt. 4-2. “To state a claim of disability discrimination under Title II of the ADA, the
15 plaintiff must allege four elements: (1) the plaintiff is an individual with a disability, (2) the
16 plaintiff is otherwise qualified to participate in or receive the benefit of some public entity’s
17 services, programs, or activities, (3) the plaintiff was either excluded from participation in or
18 denied the benefits of the public entity’s services, programs, or activities, or was otherwise
19 discriminated against by the public entity, and (4) such exclusion, denial of benefits, or
20 discrimination was by reason of the plaintiff’s disability.” *Thompson v. Davis*, 295 F.3d 890, 895
21 (9th Cir.2002); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001), *as amended on*
22 *denial of reh’g* (Oct. 11, 2001); 42 U.S.C. § 12132. Plaintiff fails to provide sufficient factual
23 allegations showing he was denied benefits because of a disability. Plaintiff also fails to explain
24 how the named Defendants were responsible for the alleged ADA violations. As conclusory

1 allegations are not sufficient to state a claim, Plaintiff has failed to state an ADA claim against
2 Defendants. *See Iqbal*, 556 U.S. at 678 (a pleading must be more than an “unadorned, the-
3 defendant-unlawfully-harmed-me accusation”).

4 Plaintiff also alleges Defendants violated his constitutional rights under § 1983. Dkt. 4-2.
5 To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a
6 violation of rights protected by the Constitution or created by federal statute, and (2) the
7 violation was proximately caused by a person acting under color of state law. *See Crumpton v.*
8 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
9 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
10 (1994).

11 To satisfy the second prong, a plaintiff must allege facts showing how individually
12 named defendants caused, or personally participated in causing, the harm alleged in the
13 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d
14 1350, 1355 (9th Cir. 1981). A person subjects another to a deprivation of a constitutional right
15 when committing an affirmative act, participating in another’s affirmative act, or omitting to
16 perform an act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).
17 Sweeping conclusory allegations against an official are insufficient to state a claim for relief.
18 *Leer*, 844 F.2d at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but
19 must allege the defendant’s own conduct violated the plaintiff’s civil rights. *City of Canton v.*
20 *Harris*, 489 U.S. 378, 385-90 (1989).

21 Plaintiff again fails to clearly allege facts that show his rights were violated by the
22 defendants. Plaintiff merely makes conclusory assertions related to his medical needs. *See id.*
23 This is not sufficient to support his claims. *See Jones v. Community Development Agency*, 733
24 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory allegations unsupported by facts are

1 not sufficient to state section 1983 claims). In sum, Plaintiff does not allege sufficiently specific
2 facts related to Defendants' conduct and, therefore, fails to state a claim upon which relief can be
3 granted.

4 *Improper Defendant.* Plaintiff names the Washington State Department of Corrections
5 ("DOC") as a Defendant. Dkt. 4-2. Section 1983 applies to the actions of "persons" acting under
6 the color of state law. The DOC, as an arm of the state of Washington, is not a "person" for
7 purposes of a §1983 civil rights action. *See Will v. Michigan Dep't. of State Police*, 491 U.S. 58,
8 65, 71 (1989). Additionally, there is no evidence the state of Washington has waived its Eleventh
9 Amendment immunity in federal courts. Therefore, the DOC is a state agency which cannot be
10 sued under §1983.

11 *Statute of Limitations.* Plaintiff alleges the allegations giving rise to this case occurred
12 beginning 2020. A complaint must be timely filed. The Civil Rights Act, 42 U.S.C. § 1983,
13 contains no statute of limitations. "Thus, the federal courts [] apply the applicable period of
14 limitations under state law for the jurisdiction in which the claim arose." *Rose v. Rinaldi*, 654
15 F.2d 546, 547 (9th Cir. 1981). In *Rose*, the Ninth Circuit determined the three year limitations
16 period identified in Revised Code of Washington 4.16.080(2) is the applicable statute of
17 limitations for § 1983 cases in Washington. 654 F.2d at 547; *see* R.C.W. § 4.16.080(2).

18 The Court also applies the forum state's law regarding equitable tolling for actions
19 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington, courts
20 permit equitable tolling "when justice requires." *Millay v. Cam*, 135 Wash.2d 193, 206 (1998).
21 "The predicates for equitable tolling are bad faith, deception, or false assurances by the
22 defendant and the exercise of diligence by the plaintiff." *Id.* Courts "typically permit equitable
23 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable
24 neglect." *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).

1 Although the statute of limitations is an affirmative defense which normally may not be
2 raised by the Court *sua sponte*, it may be grounds for *sua sponte* dismissal of an *in forma*
3 *pauperis* complaint where the defense is complete and obvious from the face of the pleadings or
4 the Court's own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–30 (9th Cir. 1984).

5 From the allegations contained in the Complaint, Plaintiff had actual notice of the facts
6 related to the claims alleged in this lawsuit in 2020. *See* Dkt. 4-2; *Kimes v. Stone*, 84 F.3d 1121,
7 1128 (9th Cir. 1996) (a claim accrues when the plaintiff knows or has reason to know of the
8 injury which is the basis of the action). Plaintiff did not initiate this lawsuit until October 18,
9 2204. Therefore, the Complaint appears to be untimely. Plaintiff has not shown statutory or
10 equitable tolling is applicable in this case. *See* Dkt. 4-2. Accordingly, Plaintiff must show cause
11 why this case should not be dismissed as barred by the statute of limitations.

12 **III. Instruction to Plaintiff and the Clerk**

13 Due to the deficiencies described above, if Plaintiff intends to pursue a § 1983 civil rights
14 action in this Court, he must file an amended complaint and within the amended complaint, he
15 must write a short, plain statement telling the Court: (1) the constitutional right Plaintiff believes
16 was violated; (2) the name of the person who violated the right; (3) exactly what the individual
17 did or failed to do; (4) how the action or inaction of the individual is connected to the violation
18 of Plaintiff's constitutional rights; and (5) what specific injury Plaintiff suffered because of the
19 individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

20 Plaintiff shall present the amended complaint on the form provided by the Court. The
21 amended complaint will act as a complete substitute for the original complaint, and not as a
22 supplement. The Court will screen the amended complaint to determine whether it contains
23 factual allegations linking each Defendant to the alleged violations of Plaintiff's rights. The
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1 Court will not authorize service of the amended complaint on any Defendant who is not
2 specifically linked to a violation of Plaintiff's rights.

3 If Plaintiff fails to file an amended complaint or fails to adequately respond to the issues
4 raised herein on or before January 6, 2025, the undersigned will recommend dismissal of this
5 action.

6 The Clerk is directed to send Plaintiff a copy of this Order and the appropriate forms for
7 filing a 42 U.S.C. § 1983 civil rights complaint and for service.

8 Dated this 5th day of December, 2024.

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David W. Christel
United States Magistrate Judge
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